

Talking Points on FISA and HR 3356

Our objectives:

To replace the PAA with a much better one to protect civil liberties;

To provide a strong role for Federal judges to ensure that protection

To avoid passing a permanent law, both because the White House still withholds information about the TSP and other programs needed to decide what permanent changes in FIASA are required; and because we need to see how well the provisions in this bill work in practice.

The **RESTORE** bill accomplishes each of these objectives.

We have built stronger protections for civil liberties than the PAA now has, and stronger protections than the Democratic bill that failed suspension; H.R. 3356.

RESTORE bill's certification program improves on H.R. 3356 in eight major ways:

1. The kind of intelligence that can be sought is narrower than under H.R. 3356. It must relate to defense and national security, and excludes general foreign policy;
2. The FISA Court **must pre-approve** the AG's **procedures** to determine whether the surveillance target is outside the U.S., **before any surveillance** begins .(H.R.3356 did not require pre-approval).
3. The Court also must pre-approve the Attorney General minimization **procedures** as meeting the statutory requirement. (H.R. 3356 required submitting procedures' to the court, but **not** their judicial approval.)
4. The Attorney General must propose **guidelines** for determining whether surveillance authorized for a foreign target is actually being directed at a U.S. person, and, triggers the requirement of a regular Section 104 individualized FISA warrant. The Court must **pre-approve** those, as well. H.R. 3356 had none.
5. The Court is [authorized] to monitor compliance with the approved procedures:
 - the minimization procedures;
 - the procedures to decide that the surveillance target is likely to be abroad;
 - the guidelines to decide that an individual FISA warrant has become Required under the statute.
6. The bill reconfirms that FISA is the exclusive authority for the government to conduct lawful electronic surveillance, until and unless Congress enacts a law providing an explicit exception. (H.R. 3356 did not.)

7. The Department of Justice Inspector General will make periodic in depth audits of the results of Court approved applications. The AG must keep a record of how much information about U.S. persons has been disseminated under the minimization procedures. Congress will get the results. (H.R. 3356 had neither.)
8. Surveillance may not be directed at a known U.S. person without an individual FISA warrant, even in foreign-to-foreign communications. (Not in H.R. 3356.)

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